

American Indian Religious Freedom Act of 1978 (amended 1994)

United States Code--**42 USC 1996-1996a**

Title 42--The Public Health and Welfare

Chapter 21--Civil Rights

Subchapter I--Generally

Sec. 1996. Protection and preservation of traditional religions of Native Americans

Sec. 1996a. Traditional Indian religious use of peyote

Sec. 1996. Protection and preservation of traditional religions of Native Americans

On and after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

(Pub. L. 95-341, Sec. 1, Aug. 11, 1978, 92 Stat. 469.)

Short Title of 1994 Amendment

Pub. L. 103-344, Sec. 1, Oct. 6, 1994, 108 Stat. 3125, provided that: "This Act [enacting section 1996a of this title] may be cited as the `American Indian Religious Freedom Act Amendments of 1994'."

Short Title

Pub. L. 95-341, as amended, which enacted this section, section 1996a of this title, and a provision set out as a note under this section, is popularly known as the American Indian Religious Freedom Act.

Federal Implementation of Protective and Preservation Functions Relating to Native American Religious Cultural Rights and Practices; Presidential Report to Congress

Section 2 of Pub. L. 95-341 provided that the President direct the various Federal departments, agencies, and other instrumentalities responsible for administering relevant laws to evaluate their policies and procedures in consultation with native traditional religious leaders to determine changes necessary to preserve Native American religious cultural rights and practices and report to the Congress 12 months after Aug. 11, 1978.

Ex. Ord. No. 13007. Indian Sacred Sites

Ex. Ord. No. 13007, May 24, 1996, 61 F.R. 26771, provided:

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

Section 1. Accommodation of Sacred Sites.

- (a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.
- (b) For purposes of this order:
 - (i) “*Federal lands*” means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;
 - (ii) “*Indian tribe*” means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103-454, 108 Stat. 4791 [see 25 U.S.C. 479a, 479a-1], and “Indian” refers to a member of such an Indian tribe; and
 - (iii) “*Sacred site*” means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

Sec. 2. Procedures.

- (a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” [25 U.S.C. 450 note].
- (b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things,

- (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites;
- (ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and
- (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

Sec. 3. Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, "agency action" has the same meaning as in the Administrative Procedure Act (5 U.S.C. 551(13)).

Sec. 4. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person.

William J. Clinton.

Section Referred to in Other Sections

This section is referred to in sections 1996a, 11701 of this title; title 16 sections 410aaa-75, 460uu-47, 460jjj-1, 470ii, 543f, 698v-6; title 20 sections 4424, 7512.

Sec. 1996a. Traditional Indian religious use of peyote

(a) Congressional findings and declarations

The Congress finds and declares that--

- (1) for many Indian people, the traditional ceremonial use of the peyote cactus as a religious sacrament has for centuries been integral to a way of life, and significant in perpetuating Indian tribes and cultures;
- (2) since 1965, this ceremonial use of peyote by Indians has been protected by Federal regulation;
- (3) while at least 28 States have enacted laws which are similar to, or are in conformance with, the Federal regulation which protects the ceremonial use of peyote by Indian religious practitioners, 22 States have not done so, and this lack of uniformity has created hardship for Indian people who participate in such religious ceremonies;
- (4) the Supreme Court of the United States, in the case of *Employment Division v. Smith*, 494 U.S. 872 (1990), held that the First Amendment does not protect Indian practitioners who use peyote in Indian religious ceremonies, and also raised uncertainty whether this religious practice would be protected under the compelling State interest standard; and
- (5) the lack of adequate and clear legal protection for the religious use of peyote by Indians may serve to stigmatize and marginalize Indian tribes and cultures, and increase the risk that they will be exposed to discriminatory treatment.

(b) *Use, possession, or transportation of peyote*

- (1) Notwithstanding any other provision of law, the use, possession, or transportation of peyote by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion is lawful, and shall not be prohibited by the United States or any State. No Indian shall be penalized or discriminated against on the basis of such use, possession or transportation, including, but not limited to, denial of otherwise applicable benefits under public assistance programs.
- (2) This section does not prohibit such reasonable regulation and registration by the Drug Enforcement Administration of those persons who cultivate, harvest, or distribute peyote as may be consistent with the purposes of this section and section 1996 of this title.
- (3) This section does not prohibit application of the provisions of section 481.111(a) of Vernon's Texas Health and Safety Code Annotated, in effect on October 6, 1994, insofar as those provisions pertain to the cultivation, harvest, and distribution of peyote.
- (4) Nothing in this section shall prohibit any Federal department or agency, in carrying out its statutory responsibilities and functions, from promulgating regulations establishing reasonable limitations on the use or ingestion of peyote prior to or during the performance of duties by sworn law enforcement officers or personnel directly involved in public transportation or any other safety-sensitive positions where the performance of such duties may be adversely affected by such use or ingestion. Such regulations shall be adopted only after consultation with representatives of traditional Indian religions for which the sacramental use of peyote is integral to their practice. Any regulation promulgated pursuant to this section shall be subject to the balancing test set forth in section 3 of the Religious Freedom Restoration Act (Public Law 103-141; 42 U.S.C. 2000bb-1).
- (5) This section shall not be construed as requiring prison authorities to permit, nor shall it be construed to prohibit prison authorities from permitting, access to peyote by Indians while incarcerated within Federal or State prison facilities.
- (6) Subject to the provisions of the Religious Freedom Restoration Act (Public Law 103-141; 42 U.S.C. 2000bb-1) [42 U.S.C. 2000bb et seq.], this section shall not be construed to prohibit States from enacting or enforcing reasonable traffic safety laws or regulations.
- (7) Subject to the provisions of the Religious Freedom Restoration Act (Public Law 103-141; 42 U.S.C. 2000bb-1), this section does not prohibit the Secretary of Defense from promulgating regulations establishing reasonable limitations on the use, possession, transportation, or distribution of peyote to promote military readiness, safety, or compliance with international law or laws of other countries.

Such regulations shall be adopted only after consultation with representatives of traditional Indian religions for which the sacramental use of peyote is integral to their practice.

(c) *Definitions*

For purposes of this section--

- (1) the term "*Indian*" means a member of an Indian tribe;

(2) the term “*Indian tribe*” means any tribe, band, nation, pueblo, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(3) the term “*Indian religion*” means any religion--

(A) which is practiced by Indians, and

(B) the origin and interpretation of which is from within a traditional Indian culture or community;
and

(4) the term “*State*” means any State of the United States, and any political subdivision thereof.

(d) *Protection of rights of Indians and Indian tribes*

Nothing in this section shall be construed as abrogating, diminishing, or otherwise affecting--

(1) the inherent rights of any Indian tribe;

(2) the rights, express or implicit, of any Indian tribe which exist under treaties, Executive orders, and laws of the United States;

(3) the inherent right of Indians to practice their religions; and

(4) the right of Indians to practice their religions under any Federal or State law.

(Pub. L. 95-341, Sec. 3, as added Pub. L. 103-344, Sec. 2, Oct. 6, 1994, 108 Stat. 3125.)

References in Text

The Religious Freedom Restoration Act, referred to in subsec. (b)(6), (7), probably means the Religious Freedom Restoration Act of 1993, Pub. L. 103-141, Nov. 16, 1993, 107 Stat. 1488, which is classified principally to chapter 21B (Sec. 2000bb et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000bb of this title and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (c)(2), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (Sec. 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Section Referred to in Other Sections

This section is referred to in section 11701 of this title; title 16 sections 410pp-5, 410pp-6, 410aaa-75, 460uu-47, 460jjj-1, 470ii, 543f, 698v-6; title 20 sections 4424, 7512.